

REMARKS

Claim Status

Claims 23-31 are pending in the application. No additional claim fee is believed to be due.

Claim 23 has been amended. Support for the amendment can be found at page 5, lines 4-15 of the specification. This claim has been amended to more clearly set out the claimed steps.

No new matter has been added. Consequently, entry of this amendment is respectfully requested.

Rejection Under 35 USC § 103(a) over Kohl et al. (US 3,681,091)

Claims 23-31 have been rejected under 35 USC § 103(a) over Kohl et al. (US 3,681,091) (hereinafter “Kohl”). The Office Action states that the Kohl reference discloses apple juice, which is juice that is often ingested every day, especially during breakfast. The Office Action states that when the human drinks the apple juice everyday for breakfast or any other time during the day, the reference still encompasses the instant claims and therefore, the limitation does not distinguish the claims over the prior art and the population of humans that ingest apple juice every day. Applicants respectfully traverse the rejection.

In order for a case of obviousness to be established, three criteria must be met. First, there must be some suggestion or motivation, i.e. desirability, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. USPTO Examination Guidelines for Determining Obviousness in View of *KSR Int’l. Co., v. Teleflex, Inc.*, No. 04-1350 (US, Apr. 30, 2007). Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all of the claim limitations. MPEP § 2143.

Kohl does not teach or suggest all of the claim limitations of independent claim 23. Specifically, Kohl disclose, teach, or suggest a method of treating dental erosion comprising, *inter alia*, a physician or dental professional directing a human, in need thereof, to orally administer an effective amount of a beverage composition having a pH less than 5 at least once daily as recited by amended independent claim 23.

Additionally, Applicants submit that a functional relationship does in fact exist between “been directed by a physician or dental professional” and the human actually ingesting based on

such direction, as recited in amended independent claim 23. On page 5, lines 9-19, of the application as filed, the specification states:

Wherein the mammal is directed to ingest one or more of the beverage compositions, such direction may be that which instructs and / or informs the user that use of the beverage composition may and / or will provide treatment against dental erosion. For example, such direction may be oral direction (*e.g.*, through oral instruction from, for example, a physician, dental professional, sales professional or organization, and / or radio or television media (*i.e.*, advertisement) or written direction (*e.g.*, through written direction from, for example, a physician or dental professional (*e.g.*, scripts), sales professional or organization (*e.g.*, through, for example, marketing brochures, pamphlets, or other instructive paraphernalia), written media (*e.g.*, internet, electronic mail, or other computer-related media), and / or packaging associated with the beverage composition (*e.g.*, a label present on a package containing the beverage composition).

Thus, as described in the specification, direction by a physician or dental professional to ingest the beverage composition can include instruction and/or information to the user that use of the beverage composition may and/or will provide treatment against dental erosion. Such direction can be oral direction or written direction and/or packaging associated with the beverage composition. Accordingly, this direction is indeed functional as it includes information to the user that use of the beverage composition may and/or will provide treatment against dental erosion and is thus related to the method of orally administering the beverage composition as recited in independent claim 23.

Because Kohl does not teach or suggest the limitations of independent claim 23 and because a functional relationship does in fact exist between “been directed by a physician or dental professional” and the human actually ingesting based on such direction, Applicants respectfully request that the 35 USC § 103 rejection be withdrawn and independent claim 23 and its dependent claims be allowed.

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CONCLUSION

This Response represents an earnest effort to place the present application in proper form and to distinguish the inventions as claimed from the applied references. In view of the foregoing entry of the amendments presented herein, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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